

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Hitachi Chemical Diagnostics, Inc., a  
California Corporation  
630 Clyde Court  
Mountain View, California 94043  
(Santa Clara County)

ID No. CAD 983 653 635

Respondent.

Docket No. HWCA 2004 0477

CONSENT ORDER

Health and Safety Code  
Section 25187

The State Department of Toxic Substances Control (Department) and Hitachi Chemical Diagnostics, Inc. (Respondent), enter into this Consent Order and agree as follows:

1. Respondent generates and treats hazardous waste at 630 Clyde Court, Mountain View, California 94043 in Santa Clara County.
2. The Department inspected the Site on August 26, 2003.
3. The Department alleges the following violations:
  - 3.1.1. The Respondent violated California Code of Regulations, title 22, section 66262.34, subsection (a)(4), section 66265.15, section 66265.33, and section 66265.35 in that on or about August 26, 2003, Respondent failed to inspect the emergency eyewash and shower on a monthly basis and failed to provide access to the shower. A table with a new invitro testing equipment on it blocked access to the shower in the large R&D lab. The eyewash and shower were last inspected on June 30, 2003, in the large R&D lab.
  - 3.1.2. The Respondent violated California Code of Regulations, title 22, section 66262.34, subsection (a)(4), section 66265.15, subsection (d), and section 66265.33 in

that on or about August 26, 2003, Respondent failed to maintain a log of the inspections conducted for the eyewash and shower emergency equipment in the large R&D lab.

3.1.3. The Respondent violated Health and Safety Code section 25123.3, subsection (d)(3)(A) and California Code of Regulations, title 22, section 66262.34, subsection (e)(1)(B) in that on or about August 26, 2003, Respondent stored the following hazardous waste containers for greater than one year at a satellite accumulation area (SAA):

- a. One (1), 5-gallon hazardous waste container of antibody thimesol marked with 8/27/02 as an initial date of accumulation.
- b. One (1), 5-gallon hazardous waste container of Proclin Ige marked with 7/1/02 as an initial date of accumulation.

3.1.4. The Respondent violated California Code of Regulations, title 22, section 67450.3, subsection (c)(8)(G), which incorporates by reference section 67450.3 (c)(11)(B), in that on or about August 26, 2003, Respondent failed to have a closure plan for the cyanide treatment unit.

3.1.5. The Respondent violated California Code of Regulations, title 22, section 67450.3 (c)(11)(G), in that on or about June 7, 2004, Respondent failed to submit a certification by an independent, qualified, professional engineer (P.E.) registered in California for the closure of the cyanide treatment unit, a 30-gallon accumulation/treatment tank containing aqueous waste with cyanogen bromide in acetonitrile.

3.1.6. The Respondent violated California Code of Regulations, title 22, section 67450.3, subsection (c)(9)(F), which incorporates by reference section 66265.192, subsection (a), in that on or about August 26, 2003, Respondent failed to have a tank assessment conducted by the year 2000 and certified by an independent, qualified, P.E., registered in California in accordance with section 66270.11(d), that attests to the

tank system's integrity for the 30-gallon waste accumulation/treatment tank containing cyanogen bromide in acetonitrile.

3.1.7. The Respondent violated California Code of Regulations, title 22, section 67450.3, subsection (c)(9)(F), which incorporates by reference section 66265.192, subsection (a), in that on or about May 26, 2004, Respondent failed to have a tank assessment conducted at the time of installation and certified by an independent, qualified, P.E., registered in California in accordance with section 66270.11(d), that attests to the tank system's integrity for the newly constructed 26-gallon waste accumulation/treatment tank containing cyanogen bromide in acetonitrile.

3.1.8. The Respondent violated California Code of Regulations, title 22, section 67450.3, subsection (c)(9)(A), which incorporates by reference section 66265.15, subsection (b), and section 66265.195, subsection (a) and (c), in that on or about August 26, 2003, Respondent failed to conduct or have conducted daily inspections for the accumulation/treatment tank containing aqueous waste with cyanogen bromide in acetonitrile.

3.1.9. The Respondent violated California Code of Regulations, title 22, section 67450.3, subsection (c)(9)(A), which incorporates by reference section 66265.15, subsection (b), and section 66265.195, subsection (a) and (c), in that on or about August 26, 2003, Respondent failed to have a written inspection schedule to conduct daily inspections for the accumulation/treatment tank containing aqueous waste with cyanogen bromide in acetonitrile.

3.1.10. The Respondent violated California Code of Regulations, title 22, section 67450.3, subsection (c)(8)(C), which incorporates by reference section 66265.16, in that on or about August 26, 2003, Respondent failed to have training documents specific to the job for employees handling hazardous waste.

3.1.11. The Respondent violated California Code of Regulations, title 22, section 66262.34, subsection (e)(2) in that on or about August 26, 2003, Respondent stored more than one hazardous waste container of the same waste stream at a SAA:

a. Two (2), 5-gallon and one (1), 1-gallon containers of spent buffers marked as AP1800 in the organic lab.

b. Two (2), 1-gallon and one (1), 2-gallon containers with spent classic bromide blue in the wet chemistry lab.

3.1.12. The Respondent violated California Code of Regulations, title 22, section 66262.34, subsection (e)(1) in that on or about August 26, 2003, Respondent failed to have an initial date of accumulation on a 5-gallon plastic container of spent Ab diluent buffer in QA/QC lab.

4. Respondent represents that it has corrected the violations in paragraphs 3.1.1, 3.1.2, 3.1.3., 3.1.4., 3.1.8., 3.1.9., 3.1.10, 3.1.11., and 3.1.12. The Department relies on this representation in issuing this Consent Order.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondent admits the violations described above.

## SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1.1. The Respondent cannot meet the regulatory requirements for closure of the cyanide treatment unit, a 30-gallon accumulation/treatment tank. Therefore, no schedule for compliance will enable Respondent to achieve compliance for the violation listed in section 3.1.5.

10.1.2. The Respondent cannot meet the regulatory requirements for a tank assessment for the 30-gallon waste accumulation/treatment tank containing cyanogens bromide in acetonitrile. Therefore, no schedule for compliance will enable Respondent to achieve compliance for the violation listed in section 3.1.6.

10.1.3. Within 30 days of the effective date of this Consent Order, the Respondent shall have a tank assessment conducted by an independent, qualified, P.E., registered in California in accordance with section 66270.11(d), and signed by the owner/operator, that attests to the tank system integrity of the accumulation/treatment tank described in section 3.1.7 containing spent cyanogen bromide in acetonitrile.

10.1.4. The Respondent shall send at least two employees to attend the California Compliance School to complete the hazardous waste training Modules I, II, III, IV, and V. Respondent must submit, for at least two employees, Certificates of Satisfactory Completion issued by the California Compliance School to the Department within 185 days of the effective date of this Consent Order. The certificates shall be submitted to:

Mr. Charles A. McLaughlin, Chief  
State Oversight and Enforcement Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Mr. Charles A. McLaughlin, Chief  
State Oversight and Enforcement Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

Mr. Jim Blamey  
Hazardous Materials Program Manager  
Santa Clara County Environmental Health  
1555 Berger Drive, Suite 300  
San Jose, California 95112-2716

Mr. Gary Leinweber, Fire Marshal  
Mountain View Fire Department  
1000 Villa Street  
Mountain View, California 94041

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the Site and to all records and information shall be provided at reasonable times to employees, contractors, and consultants of the Department as provided by operation of law, including but not limited to Health and Safety Code section 25185.

10.9. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any

samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.



10.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

### PAYMENTS

11. Respondent shall pay a total of \$34,500.00 of which \$20,071.75 is a penalty, \$6,071.00 is reimbursement of the Department's costs, and \$8,357.25 is a supplemental environmental project consisting of a contribution to the Environmental Enforcement and Training Account.

11.1. Respondent's check for \$26,142.75 (penalty and costs) shall be made payable to the Department of Toxic Substances Control. Respondent's check for \$8,357.25 (the supplemental environmental project) shall be made payable to the California Environmental Protection Agency (Cal/EPA) Environmental Enforcement and Training Account.

11.2. Respondent's check payable to the Department of Toxic Substances Control shall be delivered within 30 days of the effective date of this Consent Order, together with a copy of the attached Payment Voucher, to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806

Respondent's check payable to the Cal/EPA Environmental Enforcement and Training Account shall be delivered within 30 days of the effective date of this Consent Order, together with a copy of the attached Payment Voucher, to:

Mr. Dennis Mahoney, Staff Counsel  
Office of Legal Counsel and Investigations  
Department of Toxic Substances Control  
1001 I Street, 23rd floor  
P.O. Box 806  
Sacramento, California 95812-0806

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Hitachi Chemical Diagnostics, Inc.  
Consent Order

Photocopies of the checks shall be sent to:

Mr. Charles A. McLaughlin, Chief  
State Oversight and Enforcement Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

Mr. Dennis Mahoney, Staff Counsel  
Office of Legal Counsel and Investigations  
Department of Toxic Substances Control  
1001 I Street, 23rd floor  
P. O. Box 806  
Sacramento, California 95812-0806

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

11.3. If Respondent fails to submit the Certificates of Satisfactory Completion as required in Section 10.1.5 above, Respondent shall pay the Department an additional \$5000.00 penalty within 30 days after the expiration of the 185 day period. The payment of the additional \$5000.00 together with a copy of this Consent Order shall be sent to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21<sup>st</sup> floor  
P.O. Box 806  
Sacramento, California 95812-0806

Photocopies of the check shall be sent to:

Mr. Charles A. McLaughlin, Chief  
State Oversight and Enforcement Branch  
Statewide Compliance Division  
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8800 Cal Center Drive  
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Mr. Dennis Mahoney, Staff Counsel  
Office of Legal Counsel and Investigations  
Department of Toxic Substances Control  
1001 I Street, 23rd floor  
P. O. Box 806  
Sacramento, California 95812-0806

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

#### OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to

individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

12.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

Dated: May 30, 2005

Original signed by Richard Bollach  
Signature of Respondent's Representative

Richard Bollach, Director of Materials  
Typed or Printed Name and Title  
Hitachi Chemical Diagnostics, Inc.

Dated: June 15, 2005

Original signed by Charles A. McLaughlin  
Mr. Charles A. McLaughlin, Chief  
Statewide Oversight and Enforcement Branch  
Statewide Compliance Division  
Department of Toxic Substances Control